

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

SIG SAUER, INC.

Plaintiff,

v.

JEFFREY S. BAGNELL, ESQ., LLC,
and JEFFREY S. BAGNELL.

Defendants.

Civil Action No.: 1:22-cv-78

Demand for Jury Trial

COMPLAINT

Plaintiff SIG Sauer, Inc. (“SIG”) brings this action against defendants Jeffrey S. Bagnell, Esq., LLC (the “Bagnell Firm”) and Jeffrey S. Bagnell (“Bagnell”) for their role in publishing a false and defamatory video animation purporting to show that SIG’s P320 pistol – an iconic weapon in SIG’s award winning line of handguns, a version of which serves as the U.S. Army’s standard service firearm – is susceptible to firing without a trigger pull (an “uncommanded discharge”) due to the supposed “mechanism of failure” depicted in the animation. The animation’s message is false, and the images that comprise it – purportedly demonstrating the “mechanism of failure” in action – do not accurately portray the P320’s internal components, and conspicuously *omit* or *alter* a number of safety features that would *prevent* such an uncommanded discharge. If not taken down, the animation risks irreparably harming the SIG brand, causing significant financial losses, and misleading the public.

INTRODUCTION

1. This is an action for an injunction directing Defendants to remove an animation falsely depicting SIG's P320 handgun (the "Animation"), apparently copyrighted by Bagnell in 2021, from their YouTube channels, websites, and any other public forum, and to cease publishing the false and misleading Animation. The Animation, which Defendants claim to have based on a computed tomography scan (CT scan) of a P320, does not accurately portray the P320's internal components and falsely *omits* or *alters* a number of safety features that would *prevent* an uncommanded discharge as depicted in the Animation.

2. The Animation is demonstrably false in many ways. It contains false depictions of key internal components of the P320, makes assertions about the mechanics of the firearm that are physically impossible, and omits certain safety features, all while attempting to induce consumers to believe the animation is of an actual P320. Specifically, these falsities include:

- a. Altered geometry of the striker safety lock and striker safety notch which misleads consumers to believe this safety system is not effective in preventing a potential uncommanded discharge;
- b. Altered geometry of the striker foot and sear notch which misleads consumers to believe the sear and striker lack sufficient contact to function properly and prevent a potential uncommanded discharge;
- c. Altered geometry of the striker and striker housing which misleads consumers to believe that the striker can be displaced from its optimal position within the firearm and contribute to a potential uncommanded discharge;

- d. Altered geometry of the striker and striker housing, as well as physically impossible animation of these components and the slide and frame rails, which misleads consumers to believe that the striker foot can vertically “walk off” the sear of the firearm; and
- e. Omission of the current version of the P320 sear, which includes a secondary sear notch, as well as omission of other components of the P320 offered for sale by SIG since 2017.

3. These false depictions appear to be willful. It is no accident that in publishing an animation in 2021 purporting to show that SIG’s P320 could fire without a trigger pull, defendants inaccurately depicted, distorted or manipulated key components. Moreover, some of the images contained in the Animation have characteristics most likely the result of intentional alteration by physically changing the shape of the part, altering the image digitally, or having two components occupy the same physical space. Key components of the internal mechanisms depicted in the Animation look nothing like the parts of an actual P320, and there is no real-world way for a P320’s components to degrade in a manner that would make them resemble those depicted in the Animation.

4. The Animation, which has been viewed more than 36,000 times on YouTube, is already causing confusion, as evidenced by various comments on Bagnell’s YouTube channel. That confusion is being exacerbated by the careful curating, by Bagnell or someone on his behalf, of those comments to delete any comments that identify falsities or omissions in the Animation or raise questions about its accuracy. The continued public availability of the Animation will cause SIG to suffer ongoing and irreparable harm by damaging SIG’s reputation and goodwill.

PARTIES

5. SIG is a firearms manufacturer that supplies high-quality firearms to law enforcement, the U.S military, and civilian customers. SIG is one of New Hampshire's largest employers and maintains its principal place of business in the state, where it manufactures its firearms and operates an academy to train customers and others in the safe use of SIG firearms. SIG serves as a trusted partner of the U.S. military and a wide variety of law enforcement organizations. Indeed, the U.S. Army has adopted a version of the SIG P320 as its primary sidearm.

6. Bagnell is a lawyer residing in Connecticut who is licensed to practice law in that state. Bagnell is the principal of the Bagnell Firm.

7. The Bagnell Firm is a Connecticut based law firm. The Bagnell Firm maintains a website at www.bagnell-law.com, on which Bagnell links to press releases and articles regarding his firearms-related personal injury litigation, posts client reviews, and invites clients to contact him about his services. The website includes a dedicated page hosting the Animation.

JURISDICTION AND VENUE

8. The Court has personal jurisdiction because Defendants' false statements are targeted at SIG by name and impact SIG in New Hampshire as SIG is headquartered here and is one of the largest employers in the state. In addition, Defendants advertise their services in New Hampshire through, among other means, the Bagnell Firm's website containing the Animation.

9. The Court has subject matter jurisdiction pursuant to 28 U.S.C. 1331 in that Plaintiff's claims arise under the Lanham Act. The Court has subject matter jurisdiction over Plaintiff's defamation and New Hampshire Consumer Protection Act claims under 28 U.S.C. 1367 as they arise from the same factual basis as Plaintiff's Lanham Act claims.

10. Venue is proper in this district pursuant to 28 U.S.C. 1391 in that a substantial part of the events giving rise to this cause of action occurred in this district.

FACTS

The P320

11. SIG Sauer's P320 is a striker-fired handgun first produced in 2014.



12. Pulling the trigger of a P320 sets in motion a series of interconnected mechanical steps that disengage the multiple internal safeties and ultimately cause the striker to spring forward and fire a chambered round. Specifically, pulling the trigger causes the trigger bar to move forward, which in turn causes the captive safety lever to rotate upward, which in turn moves the safety lock upward, providing a clear path for the striker to move forward when released. This trigger bar movement simultaneously causes the sear, which holds the striker pin in its "charged" position (through engagement with the striker foot), to rotate downward, releasing the striker pin and allowing it to spring forward into the primer of a chambered round, causing the firearm to discharge.

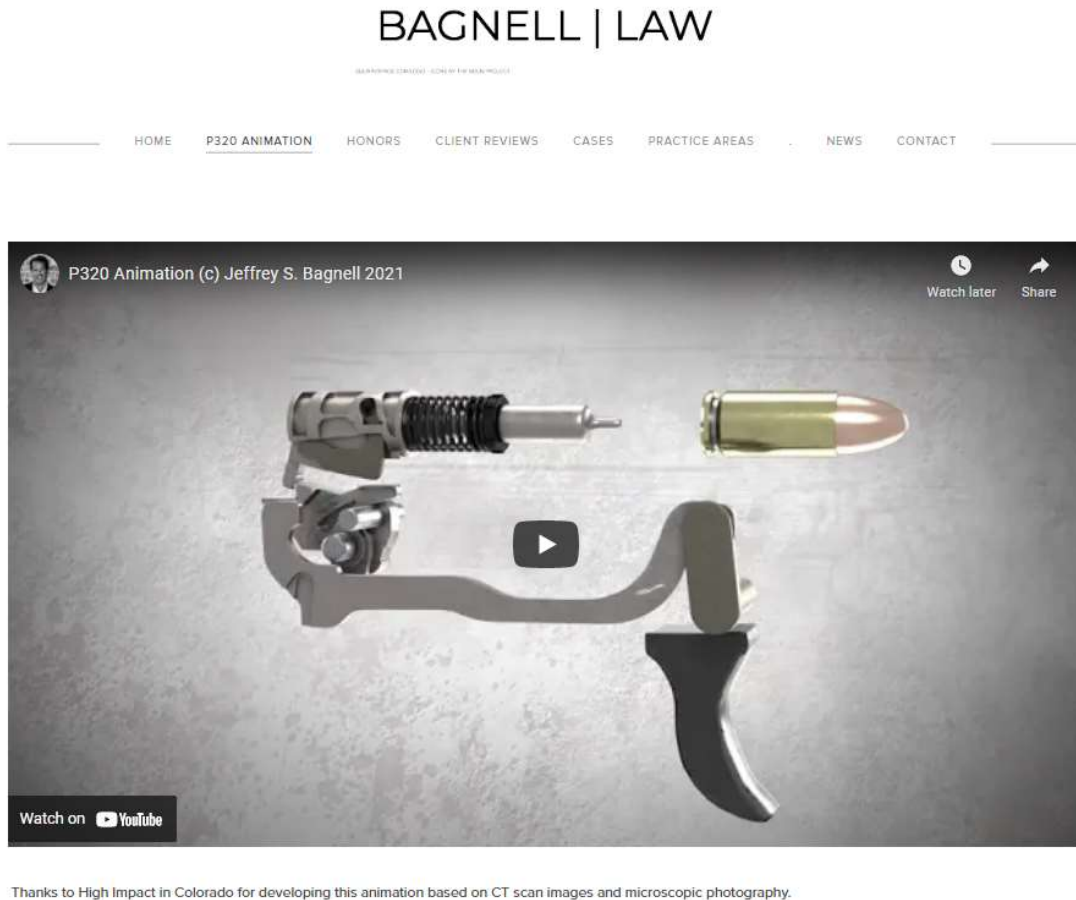
13. SIG has manufactured the P320 since 2014. Over the years, the P320's general design and method of operation has remained consistent. In August 2017, SIG implemented a Voluntary Upgrade Program for the P320, implementing certain changes in all P320 firearms

manufactured after August 2017, and SIG provided -- and continues to provide -- all owners of P320 model firearms manufactured prior to that date the opportunity to have such changes implemented in their firearm(s) free of charge. Members of the firearms community frequently refer to the P320s manufactured before August 2017 as “pre-upgrade” pistols, and P320s manufactured after August 2017 or pre-upgrade P320s that have been upgraded under the Voluntary Upgrade Program as “post-upgrade” pistols.

14. In addition to the numerous misrepresentations in the Animation that are common to both pre-upgrade and post-upgrade P320s, the Animation omits changes to the firearm’s sear, including the addition of a secondary sear notch, made as part of the Voluntary Upgrade Program. In addition, the Animation omits other changes made as part of the Voluntary Upgrade Program. Those omissions render the Animation literally false in that it does not accurately depict components contained in the P320s offered for sale since 2017.

Publication of the Bagnell Animation

15. The Animation appears on the Bagnell Firm’s website on a dedicated page (<https://www.bagnell-law.com/p320-animation>) that a consumer can reach by clicking the “P320 animation” link on the website’s main menu. The Animation appears at the top of the dedicated page, below a banner heading that contains descriptions of recent media appearances by Bagnell and press coverage of Bagnell and the Bagnell Firm. The Bagnell Firm’s website also contains a link to watch the Animation on YouTube (where consumers can leave and respond to comments), and it also contains a written legend in which Bagnell asserts a 2021 copyright in the Animation.



16. The Animation also appears on Bagnell’s personal YouTube channel, where it was posted on or about August 28, 2021. According to the view count maintained by YouTube, the Bagnell Animation has been viewed on Bagnell’s YouTube channel over 36,000 times as of the date of filing this complaint.

17. The Animation has also appeared on the internet forum “SIG Talk” (an online forum largely dedicated to the discussion of SIG and its products), shared by a user in connection with a discussion of the P320s internal safety features. This indicates that the Animation has begun to circulate among SIG’s actual and potential customers.

False and Misleading Representations of Fact Contained in the Animation

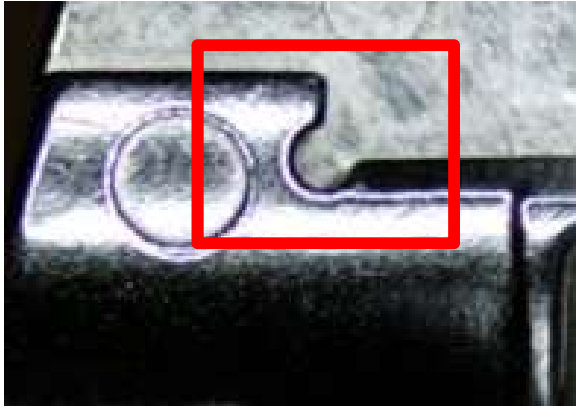
18. Defendants misrepresent the P320 firearm in the Animation in three principal ways: (1) by directly misrepresenting features of the firearm common to both pre- and post-upgrade versions of the firearm, (2) in addition to the misrepresentations common to all versions of the P320, by omitting certain features that have been included in all P320 firearms since August 2017, and (3) by actively taking steps to obfuscate the inaccuracies in the Animation by selectively deleting comments made to the Animation posted on youtube.com.

Express Misrepresentations in the Animation

19. The Animation contains multiple express misrepresentations or falsities regarding the P320, applicable to both the pre- and post- upgrade versions of the firearm, which individually and taken together risk misleading consumers into the mistaken belief that the firearm is susceptible to discharging without a trigger pull.

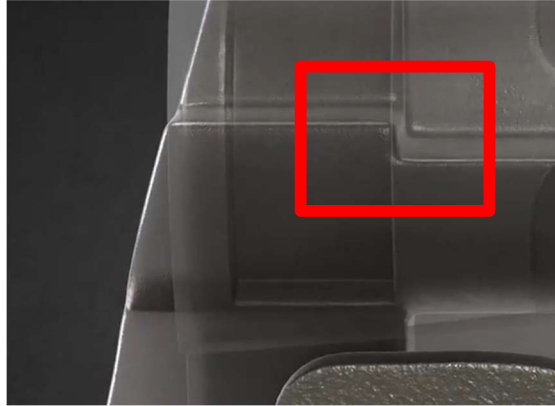
20. First, the Animation does not accurately depict the geometry of the firearm's striker safety notch; a feature which has been present in all P320s since SIG first produced the firearm in 2014 and remains unchanged in current production P320s. The Animation depicts the striker safety notch as being shorter than the engagement face of the striker safety lock, when in reality the height of the striker safety notch is as tall or taller than this engagement face. Additionally, the animation omits the presence of the relief cut at the base angle of the striker safety notch, which is present in part to ensure effective and consistent engagement between the striker safety notch and the striker safety lock.

Actual P320



Photograph of a P320 safety notch.

Animation



Side view of the P320 safety notch as depicted in the Animation. The location of the misrepresented safety notch is highlighted in red.

21. Second, the Animation depicts the striker safety lock – the component of the firearm that acts in concert with the striker safety notch to prevent forward movement of the striker in the unlikely event that the striker is released without a trigger pull – as having rounded edges and as having a loose fit against the striker. In reality, the striker safety lock is flat with straight edges and is tightly fitted against the striker by action of the safety lock spring.

Actual P320



Photograph of a pre-2017 upgrade safety lock.

Animation



Safety lock as depicted in the Animation, falsely displaying a “loose fit” and “rollover condition.”

22. Third, the Animation takes advantage of the misrepresented geometry of the striker safety notch and striker safety lock to create an animation that represents these components have

the ability to “ride over” each other, and not work as designed to stop the forward motion of the striker and prevent discharge of the firearm without a trigger pull. The misrepresentations of the geometry of these components and how they interact misleads consumers into believing that the striker safety lock of the P320 model firearm is not effective in preventing uncommanded discharges of the firearm.

23. Fourth, the Animation misrepresents the geometry and appearance of the sear notch of the P320 model firearm. Namely, after depicting the face of the sear notch as having exaggeratedly rounded edges and an indented face, the Animation asserts that these “rounded edges” result in an ineffective connection between the sear and striker and lead to the risk of the firearm discharging without a trigger pull. However, the Animation’s depiction of the sear notch is false. The actual surfaces of the sear notch are flat, and bear edges that are specifically radiused in accordance with part specifications.

Actual P320



Photograph of a pre-2017 P320 sear.

Animation



P320 sear as depicted in the Animation, falsely displaying a “rollover condition” and an “inset surface.”

24. Fifth, the Animation similarly shows the striker “foot” as having what the Defendants describe as a “rollover condition” on its edges and an “inset surface” in its center, and represents that these features contribute to the supposed ineffective connection between the sear

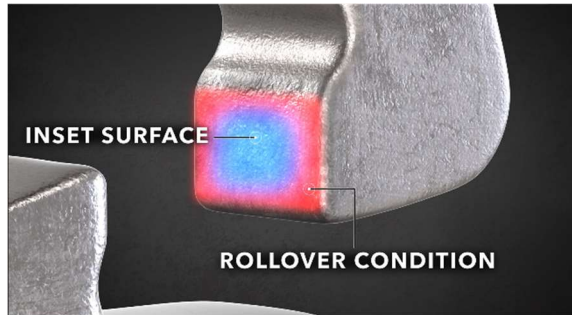
and striker. In reality, the striker foot face is flat, and bears edges that are specifically radiused in accordance with part specifications.

Actual P320



Photograph of an actual pre-2017 striker foot.

Animation



Striker foot as depicted in the Animation, falsely displaying an "inset surface" and "rollover condition."

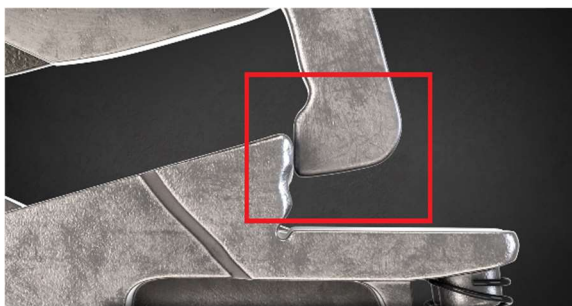
25. Sixth, the Animation falsely depicts the proportions of the striker foot. Specifically, the Animation omits the striker foot's downward angle and extension towards the sear, which serve to increase engagement in order to prevent the striker from moving forward. The Animation misrepresents the degree of engagement between the striker and the sear.

Actual P320



CT scan of a P320 striker foot and sear.

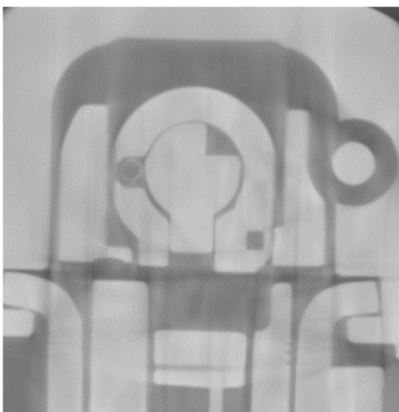
Animation



Striker foot and sear as depicted in the Animation, omitting the striker foot's downward angle and extension towards the sear.

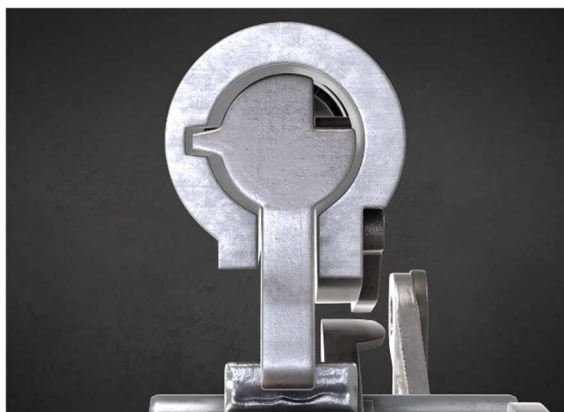
26. Seventh, the Animation claims that there is “excessive” space between the striker foot and its housing, supposedly allowing the striker foot to rotate and slip out of engagement with the sear. In reality, the space between the striker foot and the channel in which it sits is less than .005 inches in total, meaning that even if the striker were maximally rotated within the channel, no material reduction in the sear/striker connection would occur. The Animation also reduces the thickness of the circular housing, so that the Animation depicts a housing that is more than .025 inches thinner than the actual housing, falsely making it seem as though there is “excessive” space around the striker.

Actual P320



CT scan of a P320 striker foot, housing and channel.

Animation

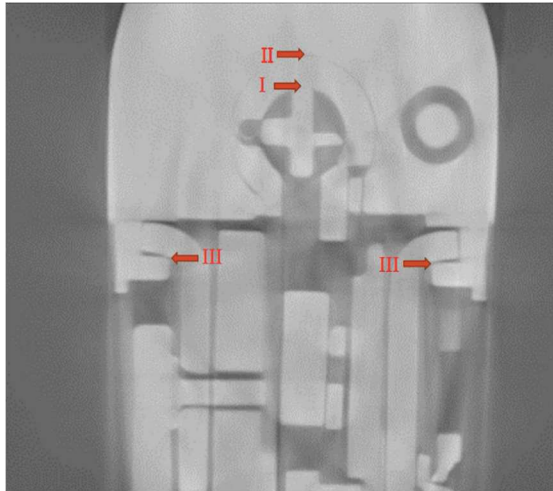


Striker foot, housing and channel as depicted in the Animation, falsely displaying “excessive space”.

27. Eighth, the Animation depicts the striker foot purportedly “walking off” the sear vertically. Once again, this depiction is false. In reality, the striker is held at rest biased at its upwardmost position relative to the sear, with the striker being biased upward within the striker housing, the striker housing being biased upward within the slide, and the slide being biased upward against the firearm’s frame rails. This biased positioning makes it physically impossible for the striker of the firearm to move upwards (or “walk off”) in relation to the sear, a movement which is only made possible in the Animation by misrepresenting the positioning and dimensions

of these parts. The Animation accomplishes this in a sequence of images by having the slide and the frame rail (both of which are solid parts) merge into each other and overlap, something which is impossible in reality.

Actual P320



CT scan of a P320 (i) striker, (ii) housing and (iii) slide, showing actual striker positioning at rest.

Other Misrepresentations

28. In addition to the express misrepresentations in the Animation common to both pre-upgrade and post-upgrade versions of the P320, Defendants also mislead consumers to believing that the Animation is referring to a version of the firearm currently offered for sale by SIG, including by prominently displaying a 2021 copyright marking.

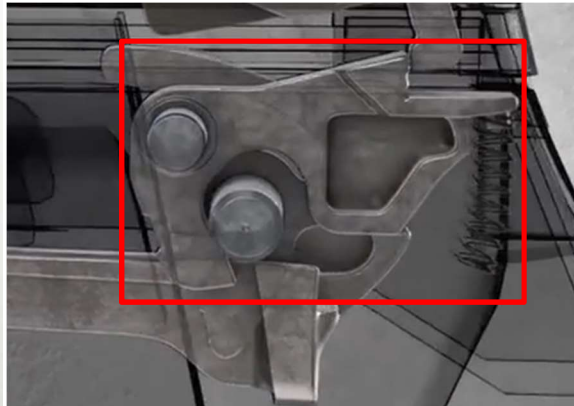
29. Specifically, the Animation fails to depict the sear design that has been present in the P320 since August 2017, instead incorporating a distorted depiction of the pre-upgrade version of the sear. The current sear design incorporates two notches: (i) the primary notch, and (ii) a secondary notch. The Animation depicts only a distorted version of the single-notch sear, despite the fact that no P320 manufactured since August 2017 has incorporated a single-notch sear.

Actual P320



Photograph of a current P320 sear including both a (i) primary notch and a (ii) secondary notch.

Animation



The sear as depicted in the Animation, including a distorted face and omitting the secondary notch.

30. Finally, the Animation misrepresents or omits other characteristics of the P320's anatomy. For example, the Animation depicts a two-piece trigger when the P320 has at all times utilized a single piece trigger. In addition, the Animation omits springs on the P320's trigger bar, striker safety lock, and safety lever, as well as the firearm's mechanical disconnect and the current "captive" safety lever design (both components which have been present in the firearm since August 2017). These myriad inaccuracies make clear that the Animation has little concern for accuracy and truth and, instead, is intended to convey a false and misleading message.

Effect of the False and Misleading Representations of Fact

31. The Animation has been viewed more than 36,000 times on YouTube as of the filing of this complaint and an unknown number of times on the Bagnell Firm's website. The Animation has generated a number of comments by YouTube account holders, many of which demonstrate confusion and deception among those who have viewed the Animation and indicate that consumers have been led to believe that the Animation depicts something plausible, when the Animation actually distorts and misrepresents reality.

32. Bagnell, or someone on his behalf, is actively deleting certain YouTube comments. One significant result of these deletions is to conceal from consumers various comments (now deleted) that raised questions about the accuracy of the Animation. Bagnell's deletion of viewer comments raising questions about the accuracy of the Animation, while leaving comments that support inaccuracies and amplify the confusion, demonstrates an intention to mislead consumers.

**COUNT I
FALSE ADVERTISING UNDER 43(a) OF THE LANHAM ACT**

33. SIG reincorporates and realleges the allegations set forth in the preceding paragraphs of this Complaint.

34. The Animation published by the Defendants contains false and misleading statements or representations of fact about SIG's product used in commercial advertising.

35. The misrepresentations contained in the Animation are material in that they relate to the inherent qualities or characteristics of the P320 and would likely influence the purchasing decision of a consumer.

36. The Animation deceives or has the tendency to deceive a substantial segment of its audience.

37. Defendants placed the Animation into interstate commerce.

38. SIG has been or is likely to be injured as a result of the misrepresentations.

**COUNT II
DEFAMATION**

39. SIG reincorporates and realleges the allegations set forth in the preceding paragraphs of this Complaint.

40. Defendants published the Animation to third parties without exercising reasonable care as to the Animation's accuracy.

- 41. The Animation constitutes a false and defamatory statement about SIG.
- 42. No valid privilege applies.
- 43. SIG has suffered and will continue to suffer damage to its reputation and goodwill as a result of the Defendants' publication of the Animation.

**COUNT III
UNFAIR COMPETITION UNDER THE NEW HAMPSHIRE CONSUMER
PROTECTION ACT, RSA 358-A**

- 44. SIG reincorporates and realleges the allegations set forth in the preceding paragraphs of this Complaint.
- 45. Defendants are "persons" within the meaning of RSA 358:A:1, I.
- 46. The Defendants' publication of the Animation constitutes an unfair act or practice under RSA 358-A:2. Specifically, the Animation is a false statement disparaging SIG.
- 47. Defendants used the Animation when conducting trade or commerce in New Hampshire.
- 48. SIG has been and will continue to be damaged as a result of Defendants' publication of the Animation.

REQUEST FOR RELIEF

Wherefore, SIG requests the following relief:

- A. A preliminary injunction directing the Defendants to remove the Animation from their websites and from YouTube, and to stop publishing the Animation on any platform, until the conclusion of this litigation.

B. A permanent injunction directing the Defendants permanently to remove the Animation from their websites and from YouTube, to stop publishing the Animation on any platform, and to make appropriate corrective disclosures.

C. Compensatory money damages.

D. Multiple damages pursuant to the New Hampshire Consumer Protection Act, RSA 358-A:10.

E. Attorneys' Fees and costs pursuant to the New Hampshire Consumer Protection Act, RSA 358-A:10.

F. Any other Relief that the Court deems appropriate.

Dated: March 2, 2022

Respectfully submitted,

SIG Sauer, Inc.

By its attorneys,

/s/ Colin J. Zick

Colin J. Zick (N.H. Bar # 16529)

Foley Hoag LLP

155 Seaport Boulevard

Boston, Massachusetts 02210-2600

Telephone: 617-832-1000

Facsimile: 617-832-7000

czick@foleyhoag.com

Anthony D. Mirenda (*pro hac forthcoming*)

K. Neil Austin (*pro hac forthcoming*)

Stephen K. Garvey (*pro hac forthcoming*)

Foley Hoag LLP

155 Seaport Boulevard

Boston, Massachusetts 02210-2600

Telephone: 617-832-1000

Facsimile: 617-832-7000

amirenda@foleyhoag.com

naustin@foleyhoag.com

sgarvey@foleyhoag.com